

TO: Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
--------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following Patents

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
10-cv-02806	11/17/10	FOR THE DISTRICT OF COLORADO
PLAINTIFF James A. Jablonski		DEFENDANT Pure Fishing, Inc. And Jarden Corporation
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 5,089,277		Please see copy of Complaint attached hereto
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
GREGORY C. LANGHAM		

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

JAMES A. JABLONSKI, Relator

v.

PURE FISHING INC., an Iowa corporation and JARDEN CORPORATION, a corporation
Defendants.

QUI TAM COMPLAINT AND JURY DEMAND

Qui Tam Relator James A. Jablonski hereby submits his Qui Tam Complaint and Jury Demand as follows:

PARTIES

1. James A Jablonski is an individual residing at 465 Lafayette Street, Denver Colorado 80218.

2. Pure Fishing, Inc. is a Iowa corporation with its principal place of business at 1900 18th Street , Spirit Lake, Iowa 51360.

3. Jarden Corporation is a Delaware Corporation and the owner of Pure Fishing Inc. with its principal place of business at 355 Theodore Fremd Avenue, Ste B-302 Rye New York 10580 engaged in the business of manufacturing and selling consumer products.

3. Pure Fishing and Jarden are engaged in the business of manufacturing and selling fishing products, including Power Bait products marked "US Patent 5,089,277".

JURISDICTION , VENUE AND STANDING

4. This action and all its claims arise under the patent laws of the United States, particularly pursuant to 35 U.S.C. 292 *et seq.*, false marking of an unpatented product(s).

5. This Court has jurisdiction pursuant to 28 U.S.C. 1338 (a); 1331 and 1332(a).

6. Venue is proper under 28 U.S.C. 1400(b) and 1391(a), (b) and (c).

7. Pure Fishing and Jarden are residents in the State of Colorado as that term is used in 28 U.S.C. 1400(b) and 28 U.S.C. 1391(b) and (c), because it is subject to personal jurisdiction in the courts of the State.

8. As a purchaser and member of the public, Jablonski has standing to sue in this Qui Tam action.

9. Pure Fishing and Jarden have made offers to sell and sold Power Bait which are falsely marked in the State of Colorado, which continue to be offered in the State in competition with other bait and lure products and thus are subject to "special "jurisdiction, because these actions give rise to Plaintiff's claim for relief.

10. Pure Fishing and Jarden have engaged more generally in business in the State of Colorado, by offering and selling other products such that it regularly entered various business locations in Colorado to market, sell, install and service products in Colorado in addition to the falsely marked fish bait and lure products and thus is subject to "general" jurisdiction.

11. The United States' interest in seeing its laws enforced itself leads to an injury in fact when those laws are not obeyed. *Stauffer v. Brooks Brothers Inc*, Federal Circuit, August 31, 2010, Case No. 2009-1428; 2009-1430; 2009-1453.

12. In enacting the false marking statute, Congress determined that such conduct is harmful and should be prohibited, which is a sufficient injury in fact to confer standing on the U.S. Government and therefore on Jablonski as the U.S. Government's implicit assignee of the action to recover for injury.

13. The public is injured by false marking, which misleads and wrongly imposes the costs of evaluating patents on the public. Thus the public has suffered an injury in fact sufficient to confer standing.

14. The marking and false marking statutes exist to give the public notice of patent rights. Congress intended the public to rely on marking as a ready means of discerning the status of intellectual property embodied in an article of manufacture or design. Federal patent policy recognizes an important public interest in permitting full and free competition in the use of ideas which are, in reality, a part of the public domain.

15. False patent marking is a serious problem. Acts of false marking deter innovation and stifle competition in the marketplace. If an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement. False marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete. Furthermore, false marking misleads the public into believing that a patentee controls the article in question (as well as like articles), externalizes the risk of error in the determination, placing it on the public rather than the manufacturer or seller of the article, and increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. In each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent search for information necessary to interpret each patent, investigation into

prior art and other information bearing on the quality of the patents, and analysis thereof can result in a finding of willful infringement, which may treble the damages an infringer would otherwise have to pay. False markings may also create a misleading impression that the falsely marked product is technologically superior to previously available ones, as articles bearing the term "patent" may be presumed to be novel, useful, and innovative.

16. Pure Fishing and Jarden have wrongfully quelled competition with respect to fishing bait and lure products thereby causing harm to the economy of the United States which further demonstrates an injury to the public.

17. Jablonski has individually been injured as a member of the public.

18. Jablonski (1) has suffered an "injury in fact," an invasion of a legally protected interest that is (a) concrete and particularized, which is (b) actual or imminent, not conjectural or hypothetical, and (2) there is a causal connection between the injury and the conduct complained of, and (3) the injury is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

19. Section 292 is a *qui tam* provision, "i.e., a statute that authorizes someone to pursue an action on behalf of the government as well as himself."

20. Section 292 is enforceable by a *qui tam* remedy, enabling any person to sue for the statutory penalty and retain one-half of the recovery.

21. A *qui tam* plaintiff, or relator, such as Jablonski, establishes standing based on the United States' implicit partial assignment of its damages claim, to "any person," 35 U.S.C. §292(b). A *qui tam* relator such as Jablonski has standing without an injury to the relator himself.

22. A *qui tam* provision operates as a statutory assignment of the United States' rights, and "the assignee of a claim has standing to assert the injury in fact suffered by the as-

signor." *Vermont Agency of Natural Resources v. United States ex rel Stevens*, 529 U.S.765, 773(2000).

23. The United States has suffered an injury in fact causally connected to Pure Fishing and Jarden ' conduct that is likely to be redressed by this Court.

24. Congress has, by enacting Section 292, defined an injury in fact to the United States. A violation of that statute inherently constitutes an injury to the United States. In passing the statute prohibiting deceptive patent mismarking, Congress determined that such conduct is harmful and should be prohibited.

25. Congress has, by enacting Section 292, defined an injury in fact to the United States. A violation of that statute inherently constitutes an injury to the United States. In passing the statute prohibiting deceptive patent mismarking, Congress determined that such conduct is harmful and should be prohibited.

26. Because the US Government would have standing to enforce its own law, Jablonski, as the Government's assignee, also has standing to enforce Section 292.

GENERAL ALLEGATIONS AND FIRST CLAIM FOR RELIEF

27. On November 17, 2010, James A. Jablonski did purchase Pure Fishing and Jarden four Power Bait products, Trout Nuggets, Spikes, Natural Scent and Trout Bait at the Bass Pro Shop 7970 Northfield Blvd Denver, CO 80238 store all marked "US Patent 5,089,277". Hundreds of Power Bait products falsely marked were offered for sale at that location alone.

28. The Patent concerns a fish bait and method for making the same.

29. Pure Fishing and Jarden falsely claimed and continues to falsely claim the Power Bait products are patented, in violation of 35 USC 292, and has since at least November 17, 2010 when the Patent expired.

30. Section 292, the "false marking" statute, provides that:

(a) . . .Whoever marks upon, or affixes to . . . any unpatented article, the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public Shall be fined not more than \$500 for every such offense.

(b) *Any person may sue for the penalty*, in which event one-half shall go to the person suing and the other to the use of the United States.

31. Pure Fishing and Jarden have engaged in making, causing to be made, using, and offering for sale fishing bait and lure products in the United States falsely marked as currently patented and continue to do so. The fish bait products were marked knowing that the products would be placed in retail stores including Bass Pro Shops and remain well beyond the '277 Patent expiration date of November 16, 2010.

32. Pure Fishing and Jarden marked upon, or affixed to, or used in advertising in connection with an unpatented article, the word "patent" and a number importing that the same is patented for the purpose of deceiving the public.

33. In marking the products "U.S. Patent 5,089,277," Pure Fishing and Jarden had and has a purpose to deceive the public by causing persons to conclude that the products are desirable and not otherwise available because they are patented. Pure Fishing and Jarden either itself intentionally printed the patent language on the fish bait and lure products or directed others to do so and intentionally continued to place the products in commerce for sale to the public while knowing that the '277 patent listed was expired. Pure Fishing and Jarden have

knowledge that the '277 Patent is expired including because a patentee is informed of the life of a patent upon issue; it pays maintenance fees during the life of the patent but does not upon expiration; it is a large company with persons knowledgeable regarding all aspects of patents; the widespread publicity given to false marking violations recently in public news media; and itself being a defendant in a separate false marking case. Pure Fishing and Jarden are defendant in a false marking case filed September 12, 2010 regarding a different patent and different products and thus is well aware that an expired patent cannot serve as the basis for marking a product. Pure Fishing and Jarden ' statements were false and Pure Fishing and Jarden knew they were false, establishing a presumption of a purpose to deceive the public. The combination of a false statement, and knowledge that the statement was false, creates a rebuttable presumption of intent to deceive the public. *Matthew A. Pequignot v. Solo Cup Company*, 608 F.3d 1356, 13 (Fed. Cir.2010). The false marking after November 16, 2010 and the benefit which accrues to Pure Fishing and Jarden by the misrepresentations is evidence of intent to deceive the public.

34. In marking the products "U.S. Patent 5,089,277," Pure Fishing and Jarden had and have a purpose to deceive competitors and potential competitors by causing such entities to conclude that they cannot manufacture and sell a like fish bait product because it is patented. That purpose is manifested by its continuing to make and sell the product with the false marking despite its knowledge that the patent is expired, which it must know given its legal resources; the fact that it is a defendant in a false marking case filed September 12, 2010 regarding a different patent and different products; and the widespread publicity given to such markings being unlawful in various public news media recently.

35. Pure Fishing and Jarden have, or regularly retains, sophisticated legal counsel and patent counsel.

36. Pure Fishing and Jarden have significant experience applying for patents, obtaining patents, and litigating patent disputes.

37. Pure Fishing and Jarden currently maintains a large patent portfolio.

38. Jablonski, on his own behalf and on behalf of the United States, seeks an award of monetary damages of not more than \$500 for each of Defendant's violations of 35 U.S.C. § 292(a), one-half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

SECOND CLAIM FOR RELIEF

39. Plaintiff incorporates by reference the allegations of paragraphs 1-38.

40. Pure Fish and Jarden have advertised on the www.Berkley-Fishing.com website Silver Minnow fish lures and Cross-Lok Snaps as patented.

41. Upon information and belief, plaintiff has been unable to locate any Berkley patent which describes either product category and therefore alleges that the products are falsely marked as patented.

Wherefore, Relator prays for judgment against Defendants as follows:

1. An order finding that letters Patent 5,089,277, is expired and invalid in law.
2. A permanent injunction precluding Defendant Pure Fishing and Jarden, their officers, directors, servants, agents, employees and attorneys from making, advertising, offering for sale, or selling fishing bait and lure products claiming to be patented under Patent 5,089,277.

3. A permanent injunction precluding Defendant Pure Fishing and Jarden, their officers, directors, servants, agents, employees and attorneys from making, advertising, offering for sale, or selling Silver Minnows or Cross Lok Snaps claiming to be patented

4. An order requiring that all products, circulars, brochures, advertisements and other documentation in the possession, custody, or control of Defendants Pure Fishing and Jarden bearing Patent 5,089,277 be delivered up and destroyed as the Court shall direct;

5. An order requiring Defendants Pure Fishing and Jarden to account to Plaintiff for any and all units sold by them since November 16, 2010 bearing Patent 5,089,277 and Silver Minnows and Cross Loks marked as patented .

6. An award of damages of \$500 for each unit sold in the United States since November 16, 2010 bearing Patent 5,089,277, and Silver Minnows and Cross Loks marked as patented together with an award of attorney's fees as provided by 35 U.S.C. 285 and CRS 13-16-122; and otherwise.

7. Interest, including prejudgment interest from the time of any infringement and costs, and witness fees, as provided by 35 U.S.C.284, 28 U.S.C. 1961, C.R.S.13-16-104; C.R.S.13-33-102; CRS 13-21-101; and otherwise;

8. For costs under CRS 13-16-122;

9. For such other and further relief as the Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

Dated this 17th day of November , 2010.

Respectfully submitted,

LAW OFFICE OF JAMES A JABLONSKI

s/ James A. Jablonski, Esq.

James A. Jablonski, Esq., No. 7289

1801 Broadway Ste 1100

Denver, CO 80202

Attorneys for Plaintiffs

Original Signature on file at Law Office of James A Jablonski

Plaintiff's Address
465 Lafayette Street
Denver, CO 80218